

pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 CFR part 531, subpart F, special rate supplement under 5 CFR part 530, subpart C, or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind, such as premium payments, differentials, and allowances.

§ 551.204 Nonexemption of certain employees.

(a) Certain nonsupervisory white-collar employees are FLSA nonexempt (unless the employees are subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status) or § 551.212 (Foreign exemption criteria)) because they do not fit any of the exemption categories. They include:

(1) Employees in equipment operating and protective occupations, and most clerical occupations;

(2) Employees performing technician work in positions properly classified below GS-9 (or the equivalent level in other white-collar pay systems) and many, but not all, of those positions properly classified at GS-9 or above (or the equivalent level in other white-collar pay systems); and

(3) Employees at any grade, or equivalent level, in occupations requiring highly specialized, technical skills and knowledge that can be acquired only through prolonged job training and experience, such as in the Air Traffic Control series, or in the Aircraft Operations series unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(b) Nonsupervisory employees in the Federal Wage System or in other comparable wage systems are nonexempt, unless the employees are subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status) or § 551.212 (Foreign exemption criteria).

§ 551.205 Executive exemption criteria.

(a) An *executive employee* is an employee whose primary duty is management (as defined in § 551.104) of a Federal agency or any subdivision thereof

(including the lowest recognized organizational unit with a continuing function) and who:

(1) *Customarily and regularly directs* the work of two or more other employees. However, an employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement. In addition, hours worked by an employee cannot be credited more than once for different executives. This takes into consideration those organizations that use matrix management, *i.e.*, a system of "shared" leadership, where supervision cuts across product and service lines in terms of accessing activities and advising top management on business operations, but where the supervisor/leader does not have the operating authority over all employees. Thus, a shared responsibility for the supervision of the same two employees in the same recognized organizational unit does not satisfy this requirement. However, a full-time employee who works 4 hours for one supervisor and 4 hours for a different supervisor will be credited as a half-time employee for both supervisors; and

(2) Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees, are given particular weight.

(b) *Particular weight.* Criteria to determine whether an employee's suggestions and recommendations are given particular weight by higher-level management include, but are not limited to: whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. Particular weight does not include consideration of an occasional suggestion with regard to the change in status of a co-worker. An